IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL (ST.) NO.8090 OF 2004

Sakharam Ramdas Patil ...Appellant

Versus

Sonabai Narayan Patil & Ors. ...Respondent

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Mr. Uday Warunjikar, counsel for Appellant

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CORAM: B. H. MARLAPALLE, J.

DATED: 27TH APRIL, 2005

P. C.:-

1. Heard Mr. Warunjikar, the learned counsel for the appellant plaintiff.

2. Register. At the threshold let it be noted that no substantial questions of law have been framed in the appeal memo.

3. The plaintiff had filed R.C.S. No. 34 of 1992 in the Court of the learned Jt. C.J.J.D. at Alibag for declaration and partition as well as the consequential separate possession of his share from the suit properties viz. agricultural land bearing survey No. 74B admeasuring about two hectors, agricultural land being survey No. 73 admeasuring about 54 Ares and the house situated at village

Belpada and house having Manglori tiles situated under the jurisdiction of Group Gram Panchayat area of Revas at Belpada (old house No. 252). The present respondents were impleaded as defendants and it was contended that the plaintiff's elder brother Narayan who was the husband of the defendant No.1 and father of defendant Nos. 2 and 3 had a joint business of selling vegetables and from the said income the suit properties were purchased. The first property was in the exclusive name of Narayan purchased by sale deed dated 12.2.1965 whereas the second and third properties were purchased in the name of defendant No.1 and deceased Narayan. It was further contended that though the properties were mutated in the respective names, they being the joint family properties, the plaintiff was entitled for declaration of his shares and also partition with consequential reliefs for separate possession. The averment further indicated that the plaintiff and Narayan were doing vegetable selling business jointly since 1949 and they were operating a joint Saving Bank account No. 230 at Dena Bank at Mumbai. Narayan died on 26.7.1990 at Belpada and when he approached the defendant No.1 on the demise of Narayan for his share in the properties, the same was denied to him and therefore, he filed the suit.

4. Admittedly, the plaintiff is the younger brother

of deceased Narayan and they have two more brothers by name Gangaram and Jagannath. There was no dispute that the suit properties were not inherited by the four brothers from their father Ramdas Patil. The other two brothers were not impleaded as defendants nor did they make any application before the trial court at any time for being impleaded as plaintiffs or defendants. In short, the plaintiffs case of joint Hindu Family was limited to himself and deceased Narayan. Both the Courts below recorded the findings that there was no evidence to show that the properties were acquired from joint income of the plaintiff and the deceased Narayan. The claim of the plaintiff was thus based on facts. He had placed reliance on the passbook at Exh.37 which indicated that it was in the joint names of the plaintiff and the deceased Narayan. However, it was noted that the entries therein were only from the year 1982 onwards and admittedly all the suit properties were purchased much before the year 1982. In the plaint the plaintiff had claimed that the land in survey No.74B was purchased only by the income accrued from the joint family business but in the cross examination he stated "the contents in para (4) of my plaint which indicates that the suit properties are purchased from the income accrued from the joint family are wrong one." This admission has been considered to be the material evidence to infer that the plaintiff was

aware that the properties were purchased by Narayan from his exclusive income. When the suit was filed, the petitioner claimed to be the age of 59 years and therefore, it was necessary for him to place evidence before the trial court that he was contributing to the family income and the properties were purchased from such income. Surely, in the year 1949 when the business was allegedly started, it was possible for him to bring on record the necessary evidence. Both the Courts below have recorded concurrent findings that except his words, there was no evidence and the oral depositions recorded before the Courts defeated his own claim. In case the suit properties were treated to be the joint family properties, the other two brothers ought to have been impleaded as necessary parties. The plaintiff failed to give any explanation for his failure to implead his other two brothers.

5. As a last resort, reliance was placed on the provisions of the Benami Transactions (Prohibition) Act 1988. This was also turned down by the Courts below by noting that the properties were purchased by Narayan in his name alongwith the plaintiff or in the name of his wife and therefore, the said Act did not apply to the suit properties. Thus, this Second Appeal does not involve any substantial questions of law and, therefore, it must fail at the threshold and

is dismissed in limine.

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